5-18-1976

Kenneth Wayne Muse v. Commonwealth of Kentucky

Reply Brief 1976-SC-0057

REPLY BRIEF

551 SW 2d 564

SUPREME COURT OF KENTUCKY

FILE NO. 76-57

KENNETH WAYNE MUSE — APPELLANT

VS. APPEAL FROM FLEMING CIRCUIT COURT
HON. JOHN H. CLARKE, JR., JUDGE

COMMONWEALTH OF KENTUCKY — APPELLEE

REPLY BRIEF FOR APPELLANT

JACK EMORY FARLEY
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CERTIFICATE OF SERVICE:

I hereby certify that a copy of the foregoing Reply Brief For Appellant has been mailed, postage prepaid, to Hon. John H. Clark, Judge, Fleming Circuit Court, Fleming County Courthouse, Flemingsburg, Kentucky 41041; Hon. Woodson T. Wood, Commonwealth Attorney, 19th Judicial District, Flemingsburg, Kentucky 41041; and Hon. Robert F. Stephens, Attorney General, Commonwealth of Kentucky Capitol Building, Frankfort, Kentucky 40601, this 18th day of May, 1976.

Timothy T. Riddell

SUPREME COURT OF KENTUCKY

FILE NO. 76-57

KENNETH WAYNE MUSE — APPELLANT

VS. APPEAL FROM FLEMING CIRCUIT COURT
HON. JOHN H. CLARKE, JR., JUDGE

COMMONWEALTH OF KENTUCKY — APPELLEE

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MAY IT PLEASE THE COURT:

PURPOSE OF THIS REPLY BRIEF

To respond to those arguments found in the Brief for Appellee.

QUESTIONS TO WHICH BRIEF ADDRESSED

I.

DID THE COURT BELOW COMMIT REVERSIBLE ERROR WHEN IT FAILED TO INSTRUCT THE JURY ON ASSAULT IN THE FIRST DEGREE AS REQUESTED BY APPELLANT?

II.

DID THE COURT BELOW ERR TO APPELLANT'S SUBSTANTIAL PREJUDICE AND DENY HIM DUE PROCESS OF LAW WHEN IT FAILED TO STOP THE TRIAL AND ORDER AN EVIDENTIARY HEARING TO DETERMINE APPELLANT'S MENTAL CAPACITY TO STAND TRIAL?

ARGUMENTS

I.

THE COURT BELOW COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO INSTRUCT THE JURY ON ASSAULT IN THE FIRST DEGREE AS REQUESTED BY APPELLANT.

Appellee, in response to this Argument, erroneously places an evidentiary burden on Appellant that is neither supported by logic nor law.

Appellee contends that Appellant is not entitled to an instruction on assault in the first degree because there was no evidence introduced, presumably by Appellant, that established that the death of Mr. Saunders was caused by something different than the gun shot wound.

At the outset Appellant was under no duty to establish exactly how Mr. Saunders died, rather he only had a duty to raise doubts that his actions resulted in Saunders' death. Appellant never denied shooting Saunders. Obviously then his defense was that he was guilty of a lesser crime than murder. By way of his trial counsel's cross-examination, he was successful to the extent that he was entitled to an instruction on assault in the first degree. This success was not based on proving the existence of another cause of death, rather it was premised on raising a real doubt that the single gun shot wound caused Saunders' death.

Perhaps the most important evidence that raised doubt that Appellant's bullet was the singe causative factor for the development of the embolism was that there were six mysterious perforations in Saunders' intestines that, according to Dr. Meigs "could have been caused by a number of blunt penetrating wounds" (T.E., p. 38). Appellee strangely argues that even though this may raise some doubts "the reasonable inference from the evidence is that, if the single bullet did not cause the perforations, these perforations were caused by other acts of violence of the Appellant" (Brief For Appellee, p. 5).

The appellate counsel for Appellant has never seen a more ridiculous assertion. There was absolutely no evidence that Appellant did anything to Mr. Saunders except shoot him <u>once</u> with a .22 rifle. How an appellate counsel for the Commonwealth can make such a totally unfounded statement

is beyond the imagination of the undersigned counsel. Hopefully the Assistant Attorney General was not intentionally trying to mislead this Court with such a statement.

Since Appellee admits that the case of Harris v. Commonwealth, 218 Ky. 798, 292 S.W. 467 (1927) "strongly supports the Appellant's case here" (Brief For Appellee, p. 10) and since that case is an all fours with the case at bar, Appellant will rest on his unrefuted Argument that the trial court committed reversible error in not instructing on assault in the first degree where there was sufficient doubt raised that Appellant's single shot actually caused the death of Mr. Saunders.

II.

THE COURT BELOW COMMITTED ERROR TO APPELLANT'S SUBSTANTIAL PREJUDICE AND DENIED APPELLANT DUE PROCESS OF LAW WHEN IT FAILED TO STOP THE TRIAL AND CONDUCT A HEARING TO DETERMINE APPELLANT'S CAPACITY TO STAND TRIAL.

Appellee mistates the issue presented in this Argument by asserting that

> the question is whether there was evidence to show the appellant's cognitive faculties were so impared that he could not comprehend the nature and consequences of the proceedings against him and to rationally consult with his attorney (Brief For Appellee, p. 11).

Fortunately this Court is quite aware that the issue as presented by Appellee is the ultimate question that a trial court must determine after a full blown evidentiary hearing on the competency of a certain defendant. The issue presented by Appellant is not whether the evidence adduced established beyond a reasonable doubt that Appellant was incompetent to stand trial but whether there was enough evidence before the trial court to raise a sufficient doubt as to whether Appellant could comprehend the nature and consequences of the proceedings against him and whether he could

fully assist his trial counsel in preparing and presenting a defense. If there was evidence introduced raising such a doubt then an evidentiary hearing, conforming with the basic requirements of due process, should have been held. Pate v. Robinson, 383 U.S. 375 (1966); Drope v. Missouri, 420 U.S. 162 (1975). Of course if a trial court, as in the case sub judice, fails to hold such a hearing then reversible error is committed. Via v. Commonwealth, Ky., 522 S.W.2d 848 (1975).

Appellee incorrectly states that Appellant offered as evidence of his incompetency the bizarre nature of the crimes that Appellant committed. Contrary to Appellee's assertion this senseless rampage was used in Appellant's original pleading to demonstrate why the trial court granted Appellant's trial counsel's request for a mental examination at arraignment (See Brief For Appellant, pp. 8-9). Also contrary to Appellee's assertion Appellant's rampage was far from rational when it is realized that Appellant was never told that Linda was pregnant (T.E., p. 24) (the only evidence that she was came from Appellant who testified that Linda was because she had told him so (T.E., p. 55)); that Linda's parents never refused to permit her to marry Appellant (the choice was left up to Linda (T.E., p. 16) and Linda chose to be with girls her own age (16) after she got her drivers license (T.E., p. 24)); and that Linda never got an abortion because she was never pregnant (T.E., p. 24).

The rest of Appellee's argument is dedicated to destroying Ray Kinney's report. Such an attack only evidences that Appellee was truly having problems with the doubts that that report obviously raised as to Appellant's competency. Suffice it to say that Appellee did nothing to quiet these doubts.

CONCLUSION

For the foregoing reasons and for those found in Appellant's original pleading, Appellant requests that this Court reverse his conviction from the court below and remand his case to the Fleming Circuit Court with directions to afford Appellant a fair trial.

Respectfully submitted

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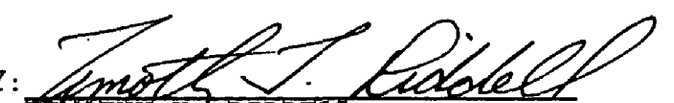
BY: 
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